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THOMAS F. MCFARLAND

November 16, 2009

By e-filing

Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Finance Docket No. 35302, *Bell Oil Terminal, Inc. v. BNSF Railway Company*

Dear Chief:

In accordance with 49 C.F.R. § 1111.10(a), on November 5, 2009, Complainant BELL OIL TERMINAL, INC. (Bell Oil) and Defendant BNSF RAILWAY COMPANY (BNSF) discussed by telephone discovery and procedural matters relating to the Complaint in the above docket.

In further accordance with that regulation, this is Bell Oil's Report setting forth proposed procedure to govern future activities and deadlines in this matter. I have been authorized by counsel for BNSF to state that BNSF concurs in the procedure proposed in this communication. In effect, therefore, this is a Joint Report in behalf of both Bell Oil and BNSF.

Bell Oil proposes that processing of the Complaint be held in abeyance pending disposition of a Motion to Dismiss the Complaint filed by BNSF on October 26, 2009. Bell Oil is filing a Reply in Opposition to that Motion to Dismiss on November 16, 2009. Inasmuch as the issues presented by the Motion to Dismiss are entirely legal in nature, hopefully the Board will rule on the Motion to Dismiss on an expedited basis.

Upon a showing of good cause, Bell Oil may in the future request active processing of the Complaint before disposition of the Motion to Dismiss, but does not choose to so request at present. Bell Oil would respond to BNSF's suggestion of arbitration if Bell Oil were to make such a future request for active processing.

Respectfully submitted,

Tom McFarland

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Thomas F. McFarland
Attorney for Bell Oil Terminal, Inc.

cc: Karl Morell, Esq.
Mr. Peter Wittich